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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

RICHARD QUIGLEY, Plaintiff, v. CITY OF WATSONVILLE; WATSONVILLE POLICE DEPARTMENT; LEE KATICH; AND DOES 1-10, Defendants.	No. C-05-03763 RMW ORDER GRANTING MOTION TO DISMISS **[Re Docket No. 26]**

Richard Quigley ("Quigley") brings his First Amended Complaint ("FAC") against the City of Watsonville, the Watsonville Police Department and Lee Katich ("Katich") (collectively "defendants") under 42 U.S.C. § 1983 for constitutional violations. Defendants move to dismiss Quigley's claims on the basis that the FAC fails to state a claim for relief. Quigley opposes the motion. The court has read the moving and responding papers and considered counsels' arguments, including briefing on the effect of the Santa Cruz superior court judge's August 16, 2006 opinion that California's motorcycle safety helmet law (Cal. Veh. Code § 27803(b)) was enforced in an unconstitutional way against Quigley because "no list of compliant helmets, or other objective criteria, exists that would give a person of reasonable intelligence a reasonable opportunity to know what is required or prohibited by the helmet law statutes." Pltf.'s RJN, Ex. 11 at 7:11-13. For the reasons set forth below, the court GRANTS defendants' motion to dismiss plaintiff's FAC.

I. BACKGROUND

The facts set forth in Quigley's FAC are essentially those alleged in his original complaint with additional allegations concerning citations issued to Quigley on July 24, 2003 and on March 19, 2004 for violations of the safety helmet law. However, Quigley only brings an additional claim based upon the March 19, 2004 incident which is set forth in his first claim for relief. On July 24, 2003 Watsonville Police Officer Ridgeway cited Quigley for a violation of California's helmet law, Cal. Veh. Code § 27803, and for wearing headgear that did not appear to be "D.O.T. approved." FAC ¶ 7. The citation was consistent with the enforcement policy of the Watsonville Police Department. *Id.* at ¶ 8. Quigley signed the citation, but demurred to it at a scheduled hearing in the Santa Cruz Superior Court. *Id.* at ¶¶ 16-17. The citation was dismissed. *Id.* at ¶ 17.

Quigley further alleges that, on March 19, 2004, Officer Katich stopped and cited him for another violation of the helmet law. *Id.* at ¶ 18. Quigley claims he was wearing a helmet bearing a D.O.T. sticker that had been certified by its manufacturer to be in compliance with the California helmet law, and that Katich had been "laying [sic] in wait for [him]." *Id.*[1]

On June 11, 2004 Quigley informed the superior court that he would protest his citations for violations of the helmet law by "no longer attempt[ing] to comply with the statute" until Watsonville explained its criteria for compliance. *Id.* at ¶ 19. He explained that his protest would involve "riding his motorcycle without wearing anything on his head." *Id.* As Quigley was leaving the court on his motorcycle, without a helmet, Katich again cited him for a violation of the helmet law. Katich ordered Quigley not to drive away without wearing a helmet. *Id.* at 20. Katich then "threatened to arrest [him] on the trumped up charge of violation of Cal. Veh. Code § 2800, as a means to stifle plaintiff's 1st Amendment right to protest what was being done to him by the CITY." *Id.* Quigley ignored Katich's "unlawful order" and left the scene. *Id.*

Katich and other Watsonville police officers gave chase and pulled Quigley over in a legal parking space at a McDonald's restaurant. Orig. Comp. ¶ 12. Quigley contends that Katich then

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[1] It appears from documents filed in connection with the motion that Quigley was wearing a baseball cap but the pleadings themselves do not allege specifics as to the make-up of the "helmet." *See* Def.'s RJN Supp. Mot., Ex I (Nov. 19, 2004 RT at 4: 14-16); *id.*, Ex. H (Jan. 24, 2005 RT at16:14-18; and Pltf.'s RJN, Ex. 11 (Aug. 16, 2006 Findings of Fact and Conclusions of Law).

unlawfully arrested him for violating Cal. Veh. Code § 2800. *Id.* at ¶ 13. While Quigley was in custody at the Watsonville Police Department, defendants towed and impounded his motorcycle. *Id.* at ¶ 14. Quigley claims they had no justification to do so since the lien holder of the title to the motorcycle was present at the scene, and thus there was no security risk to the motorcycle. FAC ¶ 22. The Superior Court eventually dismissed the section 2800 charge. *Id.* at ¶ 21.

Quigley alleges that the citations and arrest were without probable cause and therefore violated his Fourth and Fourteenth Amendment rights, including rights recognized by the injunction in *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486 (9th Cir. 1996). FAC ¶ 8. He also alleges that the arrest violated his First Amendment rights, and that the impounding of his motorcycle violated his Fifth Amendment right to due process. *Id.* at ¶¶ 29, 32. Finally, Quigley contends that the City and police department unconstitutionally failed to train and supervise officers and maintained unlawful customs and policies. *Id.* at ¶¶ 35-39.

II. LEGAL STANDARDS

A. Motion to Dismiss

Dismissal under Rule 12(b)(6) is proper only when a complaint exhibits either a "lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988). The court must accept the allegations in the complaint as true and construe them in the light most favorable to the non-moving party. *Barron v. Reich*, 13 F.3d 1370, 1374 (9th Cir. 1994). The court should not dismiss the complaint unless it appears that Quigley "can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *see also Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 248 (9th Cir. 1997).

B. Collateral Estoppel

Quigley argues that this court is bound by the superior court judge's opinion that the helmet law is unconstitutional as applied to Quigley. *See* Pltf.'s RJN, Ex. 11 at 7:11-13. The court disagrees for a number of reasons. First, it seems questionable that the City and Katich can be considered to be in privity with the prosecution in Quigley's violation proceedings. Second, even assuming privity, the superior court judge's opinion holding the helmet law unconstitutional is

inconsistent with California appellate cases. In *Buhl v. Hannigan*, 16 Cal. App. 4th 1612 (1993) the court in affirming the denial of a preliminary injunction held that the helmet law is rationally related to a legitimate concern, is not impermissibly vague, does not impermissibly infringe on protected freedom of religion or expression or the right of privacy. In *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486 (9th Cir. 1996), relied on heavily by plaintiff, the court only held that although an investigatory stop of a motorcyclist could be made on the appearance of the helmet alone, a ticketing officer must have reasonable cause to believe that the motorcyclist had actual knowledge of the helmet's nonconformity with federal standards before citing a motorcyclist who was wearing a helmet that was certified at the time of purchase. Quigley was not wearing a helmet when arrested on June 11, 2004 and no facts are pled that suggest that Officer Katich did not reasonably believe that Quigley knew his "helmet" did not comply at the time he was cited on March 19, 2004. *Easyriders* did not hold the statute unconstitutional.

Third, a court retains discretion to not apply the doctrine. For example, "a court may decline to apply collateral estoppel if injustice would result." *People v. Conley*, 116 Cal. App. 4th 566, 571 (2004) (citations omitted). In *Conley*, 116 Cal. App. 4th at 570-71, although the technical requirements of collateral estoppel were met, the court nevertheless concluded that collateral estoppel should not be applied because of the potential injustice resulting in inconsistent enforcement of the applicable penal code section on a statewide basis. In particular, the provision would be unenforceable in San Diego County, but would remain enforceable elsewhere. *Id.* Similarly, here, the court has concerns that according collateral estoppel effect to the Santa Cruz County superior court judge's ruling regarding the state-wide helmet law could potentially "creat[e] inconsistent results depending on the fortuity of the county in which the defendant was prosecuted." *See id.*

In addition, the superior court record appears to include inconsistent rulings on the helmet law as applied to Quigley's citations. On November 19, 2004 the court ruled that the standard for a helmet is not impermissibly vague and determined that Quigley was properly cited because he was not in compliance. The court held, however, that Quigley's citations were correctable offenses. Then, on August 18, 2004, the court held that the helmet laws were unconstitutional and dismissed

the same citations. Further, the court's November 19, 2004 order that the City of Watsonville and the California Highway Patrol ("CHP") sign off on the Certificate of Corrections for Quigley's citations based on the judge's conclusion that such citations are correctable offenses, is currently pending appellate review. *See* Defs.' RJN, Exs. K-M; Defs.' RJN in Reply, Ex. M. The effect of the appellate review on whether the offenses were correctable has direct bearing on whether Quigley's convictions for such violations stand and thus suggests that the application of collateral estoppel to the court's opinion that the law is unconstitutional should not be considered binding by this court. Finally, although the superior court's opinion says the statute is unconstitutional as applied by the citing officers, the opinion seems to be a holding that without further standards being adopted, the statute is unconstitutional as question of law. Traditionally, collateral estoppel does not apply to pure questions of law. *See Luben Indus., Inc. v. United States*, 707 F.2d 1037, 1039 (9th Cir. 1983).

The court is not bound by the superior court's unconstitutionality opinion.

C. Section 1983 and Qualified Immunity

Section 1983 "creates a private right of action against individuals who, acting under color of state law, violate federal constitutional or statutory rights." *Squaw Valley Dev. Co. v. Goldberg*, 375 F.3d 936, 943 (9th Cir. 2004) (quoting *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001) (en banc)). For Quigley to successfully prove his 1983 claim, he "must demonstrate that (1) the action occurred 'under color of state law' and (2) the action resulted in the deprivation of a constitutional right or federal statutory right." *Jones v. Williams*, 297 F.3d 940, 934 (9th Cir. 2002). If defendants' "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known" they are granted qualified immunity. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The court must "determine first whether the plaintiff has alleged a deprivation of a constitutional right at all." *County of Sacramento v. Lewis*, 523 U.S. 833, 842 n.5 (1998). If Quigley does allege a viable constitutional claim, the court then asks "whether the right was clearly established," *Saucier v. Katz*, 533 U.S. 194, 201 (2001); otherwise "the inquiry ends," *Cunningham v. City of Wenatchee*, 345 F.3d 802, 810 (9th Cir. 2003).

III. ANALYSIS

A. March 19, 2004 Citation

Plaintiff bases his argument that his citation for violating the helmet law on March 19, 2004 violated his constitutional rights on *Easyriders.* However, the case does not support Quigley's civil rights claim. In *Easyriders*, the Ninth Circuit held:

> [A]n officer may stop a motorcyclist for investigatory purposes based on the appearance of the helmet, even if in many cases the motorcyclist will not have the requisite knowledge of non-compliance and thus will be innocent of wrongdoing. ***
>
> Investigatory stops of motorcyclists with apparently non-complying helmets serve the dual purpose of identifying individuals who are intentionally violating the law, and informing riders who are unknowingly wearing non-complying helmets that their helmets do not comply and possibly will not protect them sufficiently in the case of an accident. Any minimal intrusion imposed upon individuals whose helmets do comply with helmet laws is justified by the furtherance of these important government goals, and the underlying California policy goal of providing "an additional safety benefit" to its motorcyclist citizens.

92 F.3d at 1497-98. The court observed, "[t]he written CHP policy regarding helmet law enforcement . . . does not require the citing officer to make any determination regarding a motorcyclist's knowledge of non-compliance, but rather states that '[o]fficers should use good judgment prior to citing a person(s) who is wearing a nonapproved helmet.'" *Id.* at 1500. Thus, the court did not preclude citation of motorcyclists reasonably believed to be wearing a helmet not certified by the manufacturer at the time of sale or a helmet which had been certified but that the rider knew was not in conformance with federal standards. *Id*. at 1492-93. Thus, under *Easyriders* a citation under Cal. Veh. Code § 27803 violates the Fourth Amendment only if an officer lacks appropriate probable cause. *Id.*

Although Quigley claims to have been wearing a "helmet" on March 19, 2004, he does not clearly allege facts suggesting that Katich believed that Quigley's "helmet" was properly certified. Paragraph 18 of plaintiff's FAC is ambiguous but the "he" in the allegation "in that plaintiff was wearing what he believed to be a helmet, bearing a D.O.T. sticker and certified by the manufacturer" appears to refer to Quigley and not Katich. Therefore, plaintiff's claim based upon his March 19, 2004 citation fails to allege facts showing that Katich did not have probable cause for the citation. Therefore, defendants' motion to dismiss the first claim is granted.

B. June 11, 2004 Citation and Arrest

Plaintiff's second and third claims for relief are essentially a restatement of plaintiff's original first claim with the addition of a claim that Officer Katich's actions on June 11, 2004 were a deliberate retaliation against plaintiff for exercising his right to protest the issuance of citations for helmet law violations. The court in its Order Granting Defendants' Motion to Dismiss dated March 17, 2006 analyzed plaintiff's constitutional claims based upon the June 11, 2004 citation and arrest. The analysis is equally applicable here but will not be repeated. In addition, Quigley's actions are not protected under the First Amendment's guarantee of freedom of speech. "Where speech becomes an integral part of the crime, a First Amendment defense is foreclosed." *United States v. Freeman*, 761 F.2d 549, 552 (9th Cir. 1985). Since Quigley's "speech" was an unlawful act, he has not alleged a viable constitutional claim. The second and third claims in the FAC fail for the same reasons that the original first claim failed.

C. June 11, 2004 Towing

Quigley claims that by towing and impounding his motorcycle defendants violated his right to due process.[2] FAC ¶ 32. Even taking Quigley's allegations to be true, he has not stated facts showing he was deprived of a constitutional right as required. *County of Sacramento*, 523 U.S. at 842 n.5. Quigley's FAC alleges that the Watsonville Police Department towing of his motorcycle without a warrant or any sort of hearing to determine if the motorcycle was in any danger of being vandalized was a violation of his due process rights. FAC ¶ 15.

In determining what process is due, the court considers:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Miranda v. City of Cornelius, 429 F.3d 858, 867 (9th Cir. 2005) (quoting *Mathews v. Eldridge*, 424

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[2] The court previously dismissed Quigley's claim that the police violated his Fourth Amendment rights by towing his motorcycle. Specifically, the court concluded that the police acted pursuant to a valid, lawful reason because it had properly invoked the community caretaking function to impound Quigley's motorcycle. Mar. 17, 2006 Order at 7.

U.S. 319, 335 (1976)). The Ninth Circuit has expressly held that, applying these factors, procedural due process does not require a pre-deprivation notice or hearing before impoundments. *Miranda*, 429 F.3d at 867 (citing *Soffer v. City of Costa Mesa*, 798 F.2d 361, 363 (9th Cir. 1986)); *Goichman v. Rheuban Motors, Inc.*, 682 F.2d 1320, 1323-24 (9th Cir. 1982); *Stypmann v. City & County of San Francisco*, 557 F.2d 1338, 1342 (9th Cir. 1977)). Accordingly, Quigley cannot allege that the police's towing of his motorcycle pursuant to a proper invocation of the community caretaking function could constitute a due process violation on the basis that no prior notice or hearing was held. *See* Mar. 17, 2006 Order at 6-8.[3]

D. Failure to Train and Supervise/Maintenance of Unlawful Customs and Policies

Finally, Quigley alleges that the City of Watsonville is liable based on the principles set forth in *Monell v. N.Y. City Dep't of Soc. Servs.*, 436 U.S. 658 (1978). Under *Monell*, a government entity is liable under section 1983 "when execution of a government's policy or custom . . . inflicts the injury." *Id.* at 694. However, liability can only attach if the government entity has caused a constitutional violation inflicting injury. 42 U.S.C. § 1983; *see City of Canton v. Harris*, 489 U.S. 378, 385 (1989). As Quigley has failed to allege facts showing any violation of his constitutional rights, no municipal liability can attach to the City of Watsonville.

E. Leave to Amend

Fed. R. Civ. P. 15(a) requires that leave to amend be freely given when justice so requires. Here, however, amendment of the second and third claims would be futile. *See Miller v. Rykoff Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988) (A motion to amend may be denied if the claim it seeks to add is futile or legally insufficient.). Plaintiff, however, is given twenty days leave to amend the first and fourth claims if he can in good faith allege that Officer Katich did not reasonably believe that Quigley was wearing an unauthorized helmet or that the City had a policy or practice of citing individuals not reasonably believed to be wearing helmets not certified by the manufacturer at

[3] On December 18, 2006 plaintiff further cited *People v. Williams*, 145 Cal. App. 4th 756 (Dec. 16, 2006) as supplemental authority in support of its Fifth Amendment claim. The court does not find that *Williams* alters its conclusion as to plaintiff's Fifth Amendment claim. Notably, *Williams* involved a claim by defendant Williams that the police's impounding of his car violated his Fourth Amendment rights, not a violation of due process rights under the Fifth Amendment.

the time of sale or helmets which had been certified but that the riders knew were not in conformance with federal standards. If Quigley was wearing a baseball or equivalent hat made of soft material when cited on March 17, 2004, the court would consider an amendment claiming that Officer Katich did not believe such a hat to be an unauthorized helmet to be made in bad faith.

IV. ORDER

For the foregoing reasons, the court GRANTS defendants' motions to dismiss plaintiff's First Amended Complaint for failure to state a claim. Leave to amend is denied as futile except as to a possible claim arising from the March 17, 2004 citation and a possible claim based upon an unconstitutional policy or practice of the City. Plaintiff is given twenty days to amend if he can do so in good faith.

DATED: 3/21/07

Ronald M. Whyte
RONALD M. WHYTE
United States District Judge

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Dated: 3/21/07

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